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and HECTOR VAZQUEZ

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

12 JENNIE QUAN, individually and as
successor in interest to BENJAMIN
13 CHIN, deceased.

14 Plaintiff.

15

v.

16 COUNTY OF LOS ANGELES;
17 MARISOL BARAJAS; HECTOR
VAZQUEZ; and DOES 3-10, inclusive.

18 Defendants.

Case No. 2:24-cv-04805-MCS(KSx)

DEFENDANTS' MEMORANDUM OF CONTENTIONS OF LAW AND FACT

[Assigned to Hon. Mark C. Scarsi,
Courtroom "7C"]

20 | TO THE COURT, PLAINTIFF AND HER ATTORNEYS OF RECORD:

21 Defendants MARISOL BARAJAS, HECTOR VAZQUEZ AND COUNTY
22 OF LOS ANGELES (“Defendants”) hereby submit their Memorandum of
23 Contentions of Fact and Law pursuant to *Local Rule* 16-4.

MEMORANDUM OF CONTENTIONS OF FACT AND LAW

25 | I. STATEMENT OF FACTUAL CONTENTIONS

On June 19, 2023, Deputy Marisol Barajas (“Barajas”) and Detective Hector Vazquez (“Vazquez”) (collectively, “Defendant Deputies”), peace officers for the Los Angeles County Sheriff’s Department (“LASD”), responded Code- 3 in their patrol

1 vehicles to dispatch calls concerning an Asian male suspect wearing a bullet-proof
2 vest and carrying an AR-15 style rifle in Diamond Bar, CA. Multiple 911 calls were
3 made describing the suspect, his rifle and bullet-proof vest. It was further reported to
4 Barajas and Vazquez through dispatch and the Local Tactical Channel (“L-TAC”)
5 that the suspect fired multiple rounds and that there was a stabbing victim in the area.
6 The suspect was Benjamin Chin (“Decedent”), and the stabbing victim was Plaintiff
7 Jennie Quan – the Decedent’s mother.

8 Barajas traveled southbound on Diamond Bar Boulevard, where she
9 encountered the Decedent walking northbound on the same street with a bullet-proof
10 vest and an AR-15. The Decedent was estimated to be approximately 15 - 20 feet
11 from Barajas’ vehicle when she turned on Diamond Bar Boulevard and first observed
12 him. Barajas parked and exited her vehicle immediately after observing the Decedent.
13 Next to Barajas was Brandon Wiseman, a civilian seated in his parked Tesla, who was
14 in the direct path of the Decedent on Diamond Bar Boulevard. Additional LASD
15 deputies were behind Barajas, preventing her from moving her vehicle to create more
16 distance between herself and the Decedent.

17 At approximately the same time that Barajas is traveling to Diamond Bar
18 Boulevard, Vazquez responded to Crooked Creek Drive where he observed the
19 Decedent wearing a bullet-proof vest and walking with an AR-15 towards Diamond
20 Bar Boulevard. Vazquez exited his vehicle and began trailing the Decedent on foot.
21 Due to the Decedent’s bullet-proof vest, Vazquez exchanged the buckshot
22 ammunition in his shotgun for the higher-impact slug ammunition. On Crooked
23 Creek Drive, Vazquez encountered an elderly Asian female with blood on her hands.
24 Vazquez did not know that the elderly Asian female was the Decedent’s mother at the
25 time of the initial interaction, but he believed she was acquainted with the Decedent
26 because she asked the deputies not to harm the Decedent. Vazquez and Detective
27 Christopher Bronowicki continued following the Decedent towards Diamond Bar
28 Boulevard while giving him commands to drop his rifle, which the Decedent ignored.

1 As the Decedent walked northbound on Diamond Bar Boulevard towards
2 Barajas and Mr. Wiseman, Barajas drew her service firearm, pointed it at the
3 Decedent and took cover behind the driver's-side door of her patrol vehicle. She then
4 issued seven commands for the Decedent to drop his rifle, which the Decedent
5 ignored. The Decedent maintained possession of his AR-15 while walking towards
6 the Barajas' and Mr. Wiseman's vehicles with his rifle slung around his right
7 shoulder.

8 After the Decedent approached to within 7-10 feet of her vehicle, Barajas fired
9 her first shot (shot 1) at the Decedent. It was unclear to Barajas whether the shot struck
10 the Decedent, and he continued walking northbound on Diamond Bar Boulevard.
11 Approximately 5.649 seconds later, Vazquez, who was approaching the Decedent's
12 left flank from behind, fired his first shot (shot 2) at the Decedent. The Decedent
13 continued walking northbound on Diamond Bar Boulevard. Barajas then issued her
14 eighth and ninth command, and began issuing her tenth, when she fired her second
15 shot (shot 3) approximately .881 seconds after Vazquez's first shot. She then fired her
16 third shot (shot 4) approximately 1.929 seconds later. After Barajas' third shot, the
17 Decedent began leaning forward at the waist. Approximately 1.552 seconds after
18 Barajas' third shot, Vazquez fired his second shot (shot 5), which was the fifth and
19 final shot in the sequence. The Decedent then fell to the ground and dropped his rifle
20 within his wingspan. No additional shots were fired.

21 After the responding deputies at the scene developed a plan to safely and
22 securely approach the Decedent, medical care was provided to the Decedent by
23 deputies and Los Angeles County Fire Department paramedics. The Decedent was
24 placed in an ambulance and transported to Pomona Valley Hospital Medical Center,
25 where he was pronounced dead at 11:09 p.m.

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1 **II. CLAIMS**

2 **A. Claim No. 1: Barajas and Vazquez Used Excessive Force Against the**
3 **Decedent in Violation of the Fourth Amendment (Quan v. Barajas**
4 **and Vazquez)**

5 **a. Elements Required to Establish Plaintiff's Claim No. 1:**

- 6 (1) The Defendant Deputies acted under color of state law;
7 (2) The Defendant Deputies unreasonably seized the
8 Decedent's person by using excessive deadly force against
9 him;
10 (3) The Defendant Deputies acted intentionally; and
11 (4) The acts of the Defendant Deputies were the cause of the
12 deprivation of the Decedent's rights protected by the
13 Constitution or laws of the United States.

14 *See Ninth Circuit Model Civil Jury Instructions §§ 9.1, 9.20, 9.25.*

15 **b. Key Evidence in Opposition to Claim No. 1**

- 16 (1) Dispatch reported the following to the Defendant Deputies:
17 the Decedent was wearing a bullet-proof vest while
18 wielding an AR-15, he fired multiple rounds in the air, there
19 was a stabbing victim in the area;
20 (2) The Walnut Sheriff's Station received multiple 911 calls
21 reporting the facts and observations relayed to the
22 Defendant Deputies described in section (1) above.
23 (3) Video evidence confirms that the Decedent wielded an AR-
24 15, wore a bullet-proof vest, stabbed the Plaintiff (his
25 mother), and fired multiple rounds in the air;
26 (4) When Barajas and Vazquez arrived to the scene, they
27 observed the Decedent wearing a bullet-proof vest and
28 wielding an AR-15;

- 1 (5) Barajas, while traveling southbound on Diamond Bar
2 Boulevard, exited her patrol vehicle after observing the
3 Decedent walking northbound on Diamond Bar Boulevard;
4 (6) Mr. Wiseman was inside his parked Tesla on Diamond Bar
5 Boulevard next to Barajas while the Decedent walked
6 northbound on the same street;
7 (7) Vazquez equipped a shotgun loaded with slug ammunition
8 and followed the Decedent on foot from Crooked Creek
9 Drive to Diamond Bar Boulevard;
10 (8) Vazquez encountered the Plaintiff on Crooked Creek Drive
11 with blood on her hands, having been stabbed by the
12 Decedent;
13 (9) Vazquez and Detective Bronowicki issued several
14 commands for the Decedent to drop his rifle prior to the
15 Decedent arriving on Diamond Bar Boulevard, which were
16 ignored;
17 (10) While the Decedent walked northbound on Diamond Bar
18 Boulevard, Barajas pointed her service handgun at the
19 Decedent and issued seven warnings for him to drop his
20 weapon;
21 (11) Less-lethal ammunition was not an option because the
22 Decedent posed a lethal imminent threat, and the Defendant
23 Deputies believed less-lethal would be futile against the
24 Decedent's bullet-proof vest.
25 (12) The Decedent approached to within 7-10 feet of Barajas'
26 vehicle on Diamond Bar Boulevard with his AR-15 slung
27 around his shoulder before Barajas fired the first shot at the
28 Decedent;

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- 1 (13) It was unclear to Barajas whether the first shot struck and
2 injured the Decedent because he continued walking
3 northbound on Diamond Bar Boulevard after the first shot;
4 (14) At the time of Barajas' first shot, Vazquez was
5 approximately 30-40 feet behind the Decedent's left-flank
6 on Diamond Bar Boulevard;
7 (15) After determining that the Decedent still posed a lethal
8 imminent threat, Vazquez fired his first shot – the
9 second shot in the sequence - approximately 5.649 seconds
10 after Barajas' shot;
11 (16) It was unclear to Vazquez whether his first shot injured the
12 Decedent because the Decedent continued walking
13 northbound on Diamond Bar Boulevard after Vazquez's
14 first shot;
15 (17) After determining that the Decedent still posed a lethal
16 imminent threat, Barajas ordered the Decedent to drop his
17 weapon an eighth and ninth time, and began ordering him a
18 tenth time, before firing her second shot – the third shot in
19 the sequence.
20 (18) Barajas' second shot occurred approximately .881 seconds
21 after Vazquez's first shot;
22 (19) It was unclear to Barajas whether the first shot struck and
23 injured the Decedent because the Decedent continued
24 walking northbound on Diamond Bar Boulevard after
25 Barajas' second shot;
26 (20) After determining that the Decedent still posed a lethal
27 imminent threat, Barajas fired her third shot – the fourth
28 shot in the sequence – approximately 1.929 seconds after

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1 firing her second shot.

- 2 (21) Barajas' third shot struck the Decedent in the lower
3 abdomen, after which he began leaning forward;
- 4 (22) After determining that the Decedent still posed a lethal
5 imminent threat, Vazquez fired his second shot – the fifth
6 and final shot in the sequence – approximately 1.552
7 seconds after Barajas' third shot.
- 8 (23) Vazquez's second shot struck the Decedent in the lower
9 back, after which the Decedent fell to the ground;
- 10 (24) No additional shots were fired after the Decedent fell to the
11 ground;
- 12 (25) The responding deputies approached the Decedent and
13 promptly began rendering medical care;
- 14 (26) The Decedent was transported to Pomona Valley Hospital
15 Medical Center, where he was pronounced deceased later
16 that day.

17 **B. Claim No. 2: Barajas and Vazquez Committed Battery Against the**
18 **Decedent (Quan v. All Defendants)**

19 a. Elements Required to Establish Plaintiff's Claim No. 2:

- 20 (1) The Defendant Deputies intentionally touched the Decedent
21 or caused him to be touched;
- 22 (2) The Defendant Deputies used unreasonable force against
23 the Decedent
- 24 (3) The Decedent did not consent to the use of force;
- 25 (4) The Decedent was harmed; and
- 26 (5) The Defendant Deputies' use of unreasonable force was a
27 substantial factor in causing the Decedent's harm.

28 *See Judicial Council of California Civil Jury Instructions No. 1305A.*

1 b. Key Evidence in Opposition to Claim No. 2:

2 (1) See key evidence and facts under Claim No. 1.

3 C. **Claim No. 3: Barajas and Vazquez Negligently Used Force Against**
4 **the Decedent (Quan v. All Defendants)**

5 a. Elements Required to Establish Plaintiff's Claim No. 3:

6 (1) The Defendant Deputies used unreasonable deadly force
7 against the Decedent; and

8 (2) The Defendant Deputies' uses of unreasonable force was a
9 substantial factor in causing the Decedent's death.

10 See Judicial Council of California Civil Jury Instruction No. 440 and
11 3921; *Heymann v. California*, 2000 U.S. Dist. LEXIS 16357 (N.D. Cal.
12 2000); *Hernandez v. City of Pomona* (2009) 46 Cal. 4th 501, 513.

13 b. Key Evidence in Opposition to Claim No. 3:

14 (1) See key evidence and facts under Claim No. 1.

15 D. **Claim No. 4: Barajas and Vazquez Violated the Bane Act (Civil**
16 **Code 52.1) (Quan v. All Defendants)**

17 a. Elements Required to Establish Plaintiff's Claim No. 4:

18 (1) That by threats, intimidation or coercion, the Defendant
19 Deputies caused the Decedent to reasonably believe that if
20 he exercised his Fourth Amendment rights, the Defendant
21 Deputies would commit violence against him and that the
22 Defendant Deputies had the apparent ability to carry out the
23 threats

24 (2) The Defendant Deputies intended to deprive the Decedent
25 of his enjoyment of the interests protected by the right

26 (3) The Decedent was harmed; and

27 (4) The Defendant Deputies' conduct was a substantial factor
28 in causing the Decedent's harm.

1 See Judicial Council of California Jury Instructions No. 3066; *Cornell v.*
2 *City & County of San Francisco*, 17 Cal.App.5th 766, 801-803 (2017).

3 b. Key Evidence in Opposition to Claim No. 4:

- 4 (1) See key evidence and facts under Claim No. 1.

5 **III. AFFIRMATIVE DEFENSES**

6 **A. First Affirmative Defense: The Defendant Deputies Are Entitled to**
7 **Qualified Immunity from the 42 U.S.C. § 1983 Claims**

8 a. Elements Required to Establish Defendants' First Affirmative
9 Defense:

- 10 (1) The Defendant Deputies' conduct did not deprive the
11 Decedent of his constitutional rights;
12 (2) The officers did not violate a "clearly established"
13 constitutional right of the Decedent; and
14 (3) A reasonable deputy faced with the circumstances facing
15 the Defendant Deputies could have believed his or her
16 conduct was lawful.

17 See *Saucier v. Katz*, 533 U.S. 194, 201 (2001); *Pearson v. Callahan*, 129
18 S.Ct. 808, 818 (2009); *Hunter v. Bryant*, 502 U.S. 224, 227 (1991).

19 b. Key Evidence in Support of Defendants' First Affirmative
20 Defense:

- 21 (1) An immediate threat existed because the Decedent was
22 armed with an AR-15, bullet-proof vest, he fired multiple
23 rounds in the air, and he stabbed the Plaintiff prior to the
24 Defendant Deputies arriving on scene;
25 (2) The Defendant Deputies were aware of the facts recited in
26 (1) above prior to encountering the Decedent on Diamond
27 Bar Boulevard;
28 (3) Barajas saw the Decedent walking northbound on Diamond

- 1 Bar Boulevard and parked her vehicle on Diamond Bar
2 Boulevard next to Mr. Wiseman, who was inside his Tesla;
3 (4) The Decedent was walking towards Barajas and Mr.
4 Wiseman with his AR-15 slung around his shoulder and
5 wearing his bullet-proof vest;
6 (5) The angle of the Decedent's right arm indicates he was
7 holding the pistol grip of the AR-15 with his right hand;
8 (6) The Decedent came within 7-10 feet of Mr. Wiseman, at
9 which point Barajas fired her handgun at the Decedent
10 (7) Prior to firing her first shot, Barajas pointed her handgun at
11 the Decedent and issued seven commands for the Decedent
12 to drop his weapon, all of which were ignored by the
13 Decedent;
14 (8) After Barajas fired her first shot, the Decedent remained
15 standing and continued walking in the direction of Mr.
16 Wiseman and Barajas;
17 (9) Vazquez and Detective Bronowicki issued several
18 commands to the Decedent to drop his weapon while the
19 Decedent was walking from Crooked Creek Drive to
20 Diamond Bar Boulevard, which the Decedent ignored;
21 (10) Vazquez witnessed the Plaintiff with her hands covered in
22 blood on Crooked Creek Drive prior to the shooting;
23 (11) After Barajas' first shot, Vazquez fired the second shot from
24 behind the Decedent while the Decedent was progressing
25 northbound on Diamond Bar Boulevard;
26 (12) The Decedent continued walking northbound on Diamond
27 Bar Boulevard after the second shot;
28 (13) Barajas issued two more commands for the Decedent to

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1 drop his weapon, and began issuing a third warning, before
2 firing a third shot overall at the Decedent;

3 (14) The Decedent continued standing and advancing towards
4 Mr. Wiseman and Barajas, and Barajas fired a fourth overall
5 shot;

6 (15) While the Decedent was still standing, Vazquez fired a fifth
7 overall shot at the Decedent;

8 (16) The Decedent fell to the ground after the fifth shot, and no
9 more shots were fired by either deputy.

10 **B. Second Affirmative Defense: The Officers Are Immune Under**
11 **California Penal Code § 196—Justifiable Homicide**

12 a. Elements Required to Establish Defendants' Second Affirmative
13 Defense:

14 (1) The circumstances reasonably created a fear of death or
15 serious bodily harm to the officers or others; and

16 (2) The officers necessarily committed the homicide against the
17 Decedent in the discharge of their legal duties.

18 See Cal. Pen. Code § 196; *Brown v. Ransweiler*, 171 Cal.App.4th 516,
19 533 (2009); *Gilmore v. Superior Court*, 230 Cal.App.3d 416, 421 (1991)
20 (justifiable homicide is privileged act that precludes all tort liability
21 arising therefrom).

22 b. Key Evidence in Support of Defendants' Second Affirmative
23 Defense:

24 (1) See key evidence under first affirmative defense.

25 **C. Third Affirmative Defense: Qualified Immunities (state)**

26 a. Elements Required to Establish Defendants' Third Affirmative
27 Defense:

28 (1) If the employee is immune from liability, Defendant County

of Los Angeles also is immune from liability;

- (2) An employee of Defendant County of Los Angeles was exercising the discretion vested in him;
 - (3) An employee of Defendant County of Los Angeles cannot be held liable for an injury caused by the act or omission of another person;
 - (4) A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause.

See Cal. Gov. Code, § 815.2(b): Injuries by Employee within Scope of Employment; Immunity of Employee; Cal. Gov. Code, § 820.2: Discretionary Acts; Cal. Gov. Code, § 820.8: Acts or Omissions of Others; Cal. Gov. Code § 821.6: Immunity.

b. Key Evidence in Support of Defendants' Third Affirmative Defense:

- (1) See key evidence under first affirmative defense.

D. Fourth Affirmative Defense: Self-Defense/Defense of Others

a. Elements Required to Establish Defendants' Fourth Affirmative Defense:

- (1) That the Defendant Deputies reasonably believed that the Decedent was going to harm each of them or others;
 - (2) That the Defendant Deputies used only the amount of force that was reasonably necessary to protect themselves or others.

See CACI 1304.

b. Key Evidence in Support of Defendants' Fourth Affirmative Defense:

(1) See key evidence under first affirmative defense.

E. Fifth Affirmative Defense: Contributory Negligence

- a. Elements Required to Establish Defendants' Fifth Affirmative Defense:

- (1) That the Decedent was negligent;
 - (2) That the Decedent and/or others' negligence was a substantial factor in causing his harm.

See CACI 405 (2009).

- b. Key Evidence in Support of Defendants' Fifth Affirmative Defense:

- (1) See key evidence under first affirmative defense.

IV. ANTICIPATED EVIDENTIARY ISSUES

1. Defendants' Motion in Limine to Exclude, or Limit, the Opinions of Bennett
Omalu, MD:

2. Defendants' Motion in Limine to Preclude any Reference or Evidence of Claims, Lawsuits, Settlements, Verdicts, Judgments, Complaints, Discipline, Administrative Investigations or Proceedings, or Other Alleged Incidents;

- ### 3. Defendants' Motion in Limine to Exclude Autopsy Photographs of Benjamin Chin.

V. ISSUES OF LAW

A. The Defendant Deputies Did Not Use Excessive Force or Commit Battery Against the Decedent

- a. Applicable Authority

Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. *Graham v. Connor*, 490 U.S. 386, 396 (1989). The right to make an arrest or investigatory stop necessarily carries the right

1 to use some degree of physical coercion or threat thereof to effect it. *Id.* Because the
2 test of reasonableness under the Fourth Amendment is not capable of precise
3 definition or mechanical application, its proper application requires careful attention
4 to the facts and circumstances of each particular case, including the severity of the
5 crime at issue, whether the suspect poses an immediate threat to the safety of the
6 officers or others, and whether he is actively resisting arrest or attempting to evade
7 arrest by flight. *Id.* The most important factor is whether the suspect posed an
8 immediate threat to the safety of the officers or others. *Bryan v. MacPherson*, 630
9 F.3d 805, 826 (9th Cir. 2010). The reasonableness of a particular use of force must
10 be judged from the perspective of a reasonable officer on the scene, rather than with
11 the 20/20 vision of hindsight. *Graham*, 490 U.S. at 396. The calculus of
12 reasonableness must embody allowance for the fact that police officers are often
13 forced to make split-second judgments—in circumstances that are tense, uncertain,
14 and rapidly evolving—about the amount of force that is necessary in a particular
15 situation. *Id.* at 396-97. The reasonableness inquiry in an excessive force case is an
16 objective one: the question is whether the officers' actions are objectively reasonable
17 in light of the facts and circumstances confronting them, without regard to their
18 underlying intent or motivation. *Id.* at 397.

19 Where the officer has probable cause to believe the suspect poses a threat of
20 serious physical harm, either to the officer or others, it is constitutionally reasonable
21 to prevent escape by using deadly force. *Tennessee v. Garner*, 471 U.S. 1, 11 (1985).
22 Thus, if the suspect threatens the officer with a weapon or there is probable cause to
23 believe he has committed a crime involving the infliction or threatened infliction of
24 serious physical harm, deadly force may be used to prevent escape. *Id.* at 12. Where
25 a suspect threatens an officer with a weapon such as a gun, the officer is justified in
26 using deadly force. *Smith v. City of Hemet*, 394 F.3d 689, 704 (9th Cir. 2005). When
27 an individual points his gun in the officers' direction, the Constitution undoubtedly
28 entitles the officer to respond with deadly force. *George v. Morris*, 736 F.3d 829, 838

1 (9th Cir. 2013).

2 b. Barajas' Use of Force Was Objectively Reasonable

3 Barajas' use of force was reasonable at all times during the encounter with the
4 Decedent. Before responding to Diamond Bar Boulevard, Barajas received dispatch
5 calls describing the Decedent as wearing a bullet-proof vest and carrying an AR-15,
6 which she confirmed through observation when she arrived to the scene. Moreover,
7 dispatch reported that multiple shots were fired and that there was a stabbing victim
8 in the area. The Decedent's vest and rifle reasonably established that he anticipated
9 a lethal conflict with deputies.

10 In the direct path of the Decedent on Diamond Bar Boulevard was Barajas and
11 Mr. Wiseman in his vehicle. Barajas drew her service handgun and pointed it at the
12 Decedent. Barajas then issued seven warnings to the Decedent to drop his rifle, which
13 he ignored while advancing on Diamond Bar Boulevard with his rifle slung around
14 his shoulder. It was only after the Decedent demonstrated a clear intent to ignore
15 deputy commands and came within dangerous proximity (7-10 feet) of Mr. Wiseman
16 in his Tesla that Barajas discharged her firearm.

17 After Barajas' first shot, the Decedent continued advancing towards Mr.
18 Wiseman with his rifle. Vazquez fired a second shot in the direction of the Decedent's
19 left-flank, but the Decedent continued moving northbound on Diamond Bar
20 Boulevard. Barajas then issued two more warnings for the Decedent to drop his
21 weapon, and began issuing a third warning, before firing a third and fourth shot at the
22 Decedent. The Decedent began bending forward after the fourth shot. Vazquez then
23 fired a fifth and final shot, striking the Decedent in the lower-back. The Decedent then
24 fell to the ground and no more shots were fired by either Defendant Deputy. Once the
25 Decedent began falling and no longer possessed a dangerous threat to deputies or
26 civilians, Barajas refrained from discharging her firearm further.

27 c. Vazquez's Use of Force Was Objectively Reasonable

28 Vazquez's use of force was reasonable based on the totality of circumstances.

1 After receiving a dispatch call that a suspect was wearing a bullet-proof vest, carrying
2 an AR-15, firing multiple rounds in the air with a stabbing victim in the area,
3 Vazquez responded to Crooked Creek Drive, where he encountered the Decedent. The
4 Decedent was walking from Crooked Creek Drive to Diamond Bar Boulevard.
5 Vazquez immediately encountered the Plaintiff, whose hands were covered in blood.
6 Although Vazquez did not know at the time that this was the Decedent's mother, he
7 believed the stabbing victim to be related to the suspect Decedent because she asked
8 the responding deputies not to harm the Decedent. Ahead of Vazquez and the Plaintiff
9 was the Decedent holding his AR-15 and approaching Diamond Bar Boulevard.
10 Vazquez trailed the Decedent and ordered him to drop his weapon, which the
11 Decedent ignored while proceeding towards Diamond Bar Boulevard.

12 Vazquez arrived on Diamond Bar Boulevard approximately 15 – 20 feet behind
13 the Decedent. The Decedent was approaching Barajas and Mr. Wiseman with his
14 rifle in the tactical low-ready position. Due to the risk of cross-fire from the Deputies
15 positioned in front of the Decedent, Vazquez was forced to flank the Decedent without
16 cover. Observing that the Decedent was ignoring warnings from deputies and rapidly
17 approaching civilian vehicles, Vazquez discharged his shotgun one (1) time. Having
18 little effect on the Decedent due to his bullet-proof vest, Vazquez discharged his
19 shotgun a second and final time. The second shot struck the Decedent, after which
20 the Decedent fell to the ground. No additional shots were fired after the Decedent fell
21 to the ground.

22 Based on the foregoing, the Defendant Deputies' use of force was reasonable.
23 Without unreasonable force, Plaintiff's claims for Excessive Force and Battery must
24 fail as a matter of law.

25 **B. The Defendant Deputies Were Not Negligent**

26 "The elements of the cause of action for wrongful death are the tort (negligence
27 or other wrongful act), the resulting death, and the damages, consisting of the
28 pecuniary loss suffered by the heirs." *Quiroz v. Seventh Ave. Center*, 140 Cal.App.4th

1 1256, 1263 (Ct. Cal. App. 2006).

2 Sheriff's deputies are not treated the same as the ordinary negligence defendant.
3 State law negligence claims against deputies are analyzed under the same objectively
4 reasonable standard set forth in *Graham*, 490 U.S. at 396-97 and the plaintiff has the
5 burden of proof in establishing excessive force. *Edson v. City of Anaheim*, 63
6 Cal.App.4th 1269, 1273 (1998); Cal. Pen. Code, § 835(a). Where the claims are based
7 on the same factual scenario, as in this case, California Courts judge claims of battery
8 and negligent use of deadly force by the same objective reasonableness standards as
9 used by the federal courts to determine whether there was a Fourth Amendment
10 violation. "Negligence claims stemming from allegations of excessive force by a
11 police officer are . . . analyzed under the Fourth Amendment's reasonableness
12 standard." *Carter v. City of Carlsbad*, 799 F. Supp. 2d 1147, 1164 (S.D. Cal. 2011)
13 (citing *Atkinson v. Cnty. of Tulare*, 790 F. Supp. 2d 1188, 1211 (E.D. Cal. 2011)
14 (noting that negligence is "measured by the same reasonableness standard of the
15 Fourth Amendment."); see also, *Hernandez v. City of Pomona* (2009) 46 Cal. 4th 501,
16 513; *David v. City of Fremont*, 2006 U.S. Dist. LEXIS at *63 (citing *Munoz v. City of*
17 *Union City* (2004) 120 Cal.App.4th 1077, 1102-6). The same consideration of the
18 totality of the circumstances required by *Graham* and *Garner* is required in
19 determining reasonableness under California's negligence law. *Hernandez*, at 514;
20 see also *Hermosillo v. County of Orange*, 2021 U.S. Dist. LEXIS 253767, *27-*32
21 (C.D. Cal. Sept. 29, 2021); *O'Neil v. City & Cty. of San Francisco*, 2021 U.S. Dist.
22 LEXIS 129510, *41-*44 (N.D. Cal. July 12, 2021); *Koussaya v. City of Stockton*, 54
23 Cal. App. 5th 909, 932-943 (Cal.Ct.App. 2020).

24 To prove negligence, a plaintiff must show the defendant had a duty to use due
25 care, he breached that duty, and the breach was the proximate cause of the
26 injury. *Hayes v. County of San Diego*, 57 Cal.4th 622, 629 (2013). Officers have a
27 duty to act reasonably when using deadly force. *Id.* The reasonableness of an
28 deputy's conduct is determined in light of the totality of circumstances, which may

1 include a consideration of the reasonableness of the officer's preshooting conduct for
2 purposes of negligence. *Id.* at 637-39. As long as a deputy's conduct falls within the
3 range of conduct that is reasonable, there is no requirement that he choose the most
4 reasonable action or the conduct that is the least likely to cause harm and at the same
5 time the most likely to result in the successful apprehension of a violent suspect, to
6 avoid liability for negligence. *Id.* at 632. Deputies have a degree of discretion as to
7 how they choose to address a particular situation. *Id.*

8 In addition, California Penal Code § 835a, provides that a deputy is privileged
9 to use reasonable force to effect an arrest, prevent escape or overcome resistance.
10 Therefore, no liability may be had where an officer uses reasonable force to effect an
11 arrest. Further, immunity from civil liability arises from Cal. Gov. Code § 820.2,
12 which also employs the Fourth Amendment reasonableness standard in conferring
13 immunity for discretionary acts of officers. *Hernandez*, at 514; *see also Koussaya*,
14 54 Cal. App. 5th 909, 932-943 (Cal.Ct.App. 2020).

15 Here, the Defendant Deputies reasonably perceived the Decedent to be a lethal
16 imminent threat to themselves and the general public based on the factors made
17 known to them prior to and during the encounter. Prior to encountering the Decedent
18 on Diamond Bar Boulevard, dispatch informed the Defendant Deputies that the
19 Decedent had an AR-15, was wearing a bullet-proof vest, had fired multiple rounds
20 in the air, and that there was a stabbing victim in the area. Upon arriving on Diamond
21 Bar Boulevard, Barajas witnessed the Decedent wearing his bullet-proof vest and with
22 a rifle slung around his shoulder, heading towards Mr. Wiseman's vehicle. Barajas
23 pointed her handgun at the Decedent and issued seven warnings to drop his weapon
24 – a clear indication that deadly force would be used if he did not comply. The
25 Decedent came within 7-10 feet of Mr. Wiseman's vehicle before Barajas was left
26 with no choice but to shoot the Decedent. She fired three shots at the Decedent before
27 the Decedent fell to the ground and no longer posed a lethal threat.

28 Vazquez similarly witnessed the Decedent armed with his AR-15 and wearing

1 a bullet-proof vest when Vazquez arrived on Crooked Creek Drive behind the
2 Decedent. Several warnings were issued by Vazquez to the Decedent to drop his
3 weapon prior to the Decedent's arrival on Diamond Bar Boulevard, but the warnings
4 were ineffective. While trailing the Decedent on Crooked Creek Drive, Vazquez
5 observed the Plaintiff with blood on her hands – observing first-hand the stabbing
6 victim that dispatch described to responding deputies. Upon arriving on Diamond Bar
7 Boulevard and witnessing the Decedent come within dangerous proximity of the
8 Decedent, Vazquez fired two shots at the Decedent from his shotgun, including the
9 fifth and final shot.

10 Based on the totality of circumstances, the actions of the Defendant Deputies
11 were reasonable. Because the actions of the Defendant Deputies were reasonable, the
12 Defendant Deputies did not breach their duty of care to the Decedent. There is no
13 negligent conduct upon which the Decedent can therefore recover.

14 **C. The Deputies Are Entitled to Qualified Immunity**

15 A deputy is qualifiedly immune unless he violated a federal statutory or
16 constitutional right, and the unlawfulness of his conduct was clearly established at the
17 time. *D.C. v. Wesby*, 138 S.Ct. 577, 589 (2018). “Clearly established” means that, at
18 the time of the conduct, the law was sufficiently clear that every reasonable officer
19 would understand that what he is doing is unlawful, meaning existing law must have
20 placed the constitutionality of the officer’s conduct beyond debate. *Id.* This protects
21 all but the plainly incompetent or those who knowingly violate the law. *Id.* To be
22 clearly established, a legal principle must have a sufficiently clear foundation in then-
23 existing precedent. *Id.* The rule must be “settled law,” meaning it is dictated by
24 controlling authority or a robust consensus of cases of persuasive authority. *Id.* at
25 589-90. It is not enough that the rule is suggested by then-existing precedent. *Id.* at
26 590. The precedent must be clear enough that every reasonable official would
27 interpret it to establish the particular rule the plaintiff seeks to apply. *Id.* Otherwise,
28 the rule is not one that every reasonable official would know. *Id.*

1 The “clearly established” standard also requires that the legal principle clearly
2 prohibit the officer’s conduct in the particular circumstances before him. *D.C.*, 138
3 S.Ct. at 590. The rule’s contours must be so well defined it is clear to a reasonable
4 officer that his conduct was unlawful. *Id.* This requires a high degree of
5 specificity. *Id.* Courts must not define clearly established law at a high level of
6 generality, since doing so avoids the crucial question whether the official acted
7 reasonably in the particular circumstances that were faced. *Id.* A rule is too general
8 if the unlawfulness of the conduct does not follow immediately from the conclusion
9 that the rule was firmly established. *Id.* For instance, a rule that it was “clearly
10 established” that use of force is contrary to the Fourth Amendment if it is excessive
11 under objective standards of reasonableness is too general. *Kisela v. Hughes*, 138
12 S.Ct. 1148, 1153 (2018).

13 “To be “clearly established,” a rule must be “dictated by controlling authority
14 or by a robust consensus of cases of persuasive authority.” *District of Columbia v.
15 Wesby*, 138 S. Ct. 577, 589-90 (2018); see also *Evans v. Skolnik*, 997 F.3d 1060, 1066
16 (9th Cir. 2021) (noting that Ninth Circuit precedent is sufficient to meet the “clearly
17 established” prong of qualified immunity). The proper inquiry focuses on whether “it
18 would be clear to a reasonable officer that his conduct was unlawful in the situation
19 he confronted,” . . . or “whether the state of the law [at the relevant time] gave ‘fair
20 warning’ to the officials that their conduct was unconstitutional.” (internal citations
21 omitted) Courts must define the law to a “high degree of specificity.” *Wesby*, 138 S.
22 Ct. at 590. The dispositive question is “whether the violative nature of particular
23 conduct is clearly established.” *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (emphasis in
24 original). “While there does not have to be a case directly on point, existing precedent
25 must place the lawfulness of the particular action beyond debate.” *City of Escondido
26 v. Emmons*, 139 S. Ct. 500, 504 (2019) (internal quotations omitted.)” *Tuggle v. City
27 of Tulare* (E.D. Cal., June 29, 2023, No. 1:19-CV-01525-JLT-SAB) 2023 WL
28 4273900, at *9, aff’d sub nom. *Cuevas v. City of Tulare* (9th Cir., July 10, 2024, No.

1 23-15953) 2024 WL 3352710.

2 The facts and circumstances known to the Defendant Deputies during the
3 encounter with the Decedent justified the deadly use of force. To sustain a claim
4 under 42 U.S.C. § 1983 against a defendant, the plaintiff must prove that: (1)
5 defendant was acting under color of state law, and (2) deprived plaintiff of rights
6 secured by the Constitution or federal statutes. *Gibson v. United States*, 781 F.2d
7 1334, 1338 (9th Cir. 1986). The Fourth Amendment protects “against excessive force
8 in the course of an arrest.” *Gravelet-Blondin v. Shelton* 728 F.3d 1086, 1090 (9th Cir.
9 2013), cert. denied, 2014 WL 684092 (2014). Evaluation of “excessive force”
10 requires examining “the objective reasonableness of a particular use of force to
11 determine whether it was indeed excessive.” *Id.* All claims of excessive force are
12 analyzed under the objective reasonableness standard of the Fourth Amendment as
13 enunciated in *Graham v. Connor*, 490 U.S. 386 (1989), and *Tennessee v. Garner*, 471
14 U.S. 1 (1985). Factors *Graham* sets for evaluating reasonability include: “(1) the
15 severity of the crime at issue, (2) whether the suspect posed an immediate threat to
16 the safety of the officers or others, and (3) whether the suspect actively resisted arrest
17 or attempted to escape.” *Maxwell v. Cnty. of San Diego*, 697 F.3d 941, 951 (9th Cir.
18 2012). *Garner* considered similar factors, including the immediacy of the threat,
19 necessity of force to safeguard officers or public, and whether officers issued a
20 warning, assuming it was practicable. *George v. Morris*, 736 F.3d 829, 837 (9th Cir.
21 2013). “[A]n officer may reasonably use deadly force when he or she confronts an
22 armed suspect in close proximity whose actions indicate an intent to attack. In these
23 circumstances, the Courts cannot ask an officer to hold fire in order to ascertain
24 whether the suspect will, in fact, injure or murder the officer. The high numbers of
25 officer mortalities in recent years illustrate the unreasonableness of such a
26 notion.” (*Reynolds v. County of San Diego* (S.D.Cal.1994) 858 F.Supp. 1064, 1073.)

27 Despite these factors, “there are no per se rules in the Fourth Amendment
28 excessive force context[,]” *Mattos v. Agarano*, 661 F.3d 433, 441 (9th Cir. 2011) (en

1 banc), cert. denied, 132 S.Ct. 2682 (2012), and the court must balance “the nature and
2 quality of the intrusion on the individual’s Fourth Amendment interests against the
3 countervailing government interests at stake.” *Graham*, 490 U.S. at 397 (internal
4 quotation marks and citations omitted). Further, reasonableness is evaluated from the
5 perspective of a reasonable officer on the scene without the benefit of hindsight.
6 *Graham*, 490 U.S. at 396; *see also Saucier v. Katz*, 533 U.S. 194, 205 (2001),
7 overruled on other grounds by *Person v. Callahan*, 555 U.S. 223 (2009).
8 Consideration must be given to “the fact that police officers are often forced to make
9 split-second judgments – in circumstances that are tense, uncertain, and rapidly
10 evolving ...” *Graham*, 490 U.S. at 396-97; *Fisher v. City of San Jose*, 558 F.3d 1069,
11 1081 (9th Cir. 2009) (en banc) (same). “Thus, under *Graham*, we must avoid
12 substituting our personal notions of proper police procedure for the instantaneous
13 decision of the officer at the scene. We must never allow the theoretical, sanitized
14 world of our imagination to replace the dangerous and complex world that policemen
15 face every day.” *Gonzalez* at 813.

16 The Defendant Deputies are entitled to qualified immunity because the
17 Decedent’s rights were not so clearly established in a way that would have put every
18 reasonable officer on notice that their conduct during the shooting violated those
19 rights. As discussed in *Graham*, “objectively reasonable” use of force requires
20 examining the facts and circumstances of the circumstances confronting the deputies.
21 *Graham*, 490 U.S. at 397, 109 S.Ct. 1865. Courts look at (1) the severity of the crime
22 at issue, (2) whether the suspect posed an immediate threat to the safety of the officers
23 or others, and (3) whether the suspect actively resisted arrest or attempted to escape
24 when evaluating whether a deputy’s actions were reasonable. *Id.* at 396. Weighing
25 the totality of circumstances leads to the inescapable conclusion that the Defendant
26 Deputies’ use of force was reasonable and necessary to protect themselves and nearby
27 citizens from the threat of imminent death or substantial bodily harm.

28 Each use of force by the Defendant Deputies was objectively reasonable given

1 the facts known to the Defendant Deputies prior to the encounter and the
2 ineffectiveness of warnings and lethal munitions during the shooting. The potential
3 crime at issue – murder – and the Decedent’s possession of an AR-15 and use of a
4 bullet-proof vest posed a significant and deadly threat to deputies and civilians in the
5 vicinity. All uses of force ceased once the Decedent fell to the ground and dropped
6 his rifle. Qualified immunity is thus applicable to the Defendant Deputies.

7 Barajas’ use of force was reasonable at all times during the encounter with the
8 Decedent. Before responding to Diamond Bar Boulevard, Barajas received dispatch
9 calls describing the Decedent as wearing a bullet-proof vest and AR-15, which she
10 confirmed through observation when she arrived to the scene. The vest and rifle
11 established that the Decedent anticipated a lethal conflict with deputies. Moreover,
12 she received a dispatch call that there was a stabbing victim prior to her arrival. In
13 the direct path of the Decedent on Diamond Bar Boulevard were deputies and civilians
14 in vehicles. Barajas then issued seven (7) warnings to the Decedent to drop his rifle,
15 which he ignored while continuing his advancement. It was only after the Decedent
16 demonstrated a clear intent to ignore deputy commands and came within dangerous
17 proximity of Mr. Wiseman in his Tesla that Barajas discharged her firearm. The
18 Decedent’s bullet-proof vest prevented the lethal munitions from halting the
19 Decedent’s approach, requiring Barajas to continue discharging her weapon until the
20 Decedent fell to the ground and dropped his rifle after Vazquez’s second, and final,
21 shot. Once the Decedent began falling and no longer possessed a dangerous threat to
22 deputies or civilians, Barajas refrained from discharging her firearm further.

23 Moreover, Deputy Vazquez’s use of force was reasonable based on the totality
24 of circumstances. After receiving a dispatch call concerning a man wearing a bullet-
25 proof vest and firing his rifle around the Diamond Bar area, Vazquez arrived to the
26 scene and immediately observed the Plaintiff’s hand covered in blood – placing him
27 on notice that the Decedent was willing to commit violence against someone he knew.
28 Vazquez then proceeded to Diamond Bar Boulevard, where he observed the Decedent

1 approximately 15 – 20 feet ahead approaching deputies and civilians with his rifle in
2 the tactical low-ready position. Due to the risk of cross-fire from the Deputies
3 positioned in front of the Decedent, Vazquez was forced to flank the Decedent without
4 cover. Observing that the Decedent was ignoring warnings from deputies and rapidly
5 approaching civilian vehicles, Vazquez discharged his shotgun one (1) time. Having
6 little effect on the Decedent due to his bullet-proof vest, Vazquez discharged his
7 shotgun a second and final time. The second shot struck the Decedent, after which
8 the Decedent fell to the ground. No additional shots were fired after the Decedent fell
9 to the ground.

10 Plaintiff contends that the Decedent's failure to raise, point or shoot the rifle
11 during the encounter negates any claim that he posed an imminent lethal threat, or
12 that the Defendant Deputies are entitled to qualified immunity. These elements are
13 not dispositive as to whether an imminent threat existed, or whether qualified
14 immunity applies. Qualified immunity is inapplicable when there is a showing that,
15 based on the totality of circumstances, every reasonable officer would have
16 understood that their use of force violated the clearly established rights of the suspect.
17 Based on the totality of circumstances and the facts known to the Defendant Deputies
18 prior to and during the encounter, Plaintiff cannot establish that every reasonable
19 officer would have refrained from using deadly force against the Decedent.

20 The Defendant Deputies were both made aware prior to encountering the
21 Decedent that he had fired multiple rounds in the air, was wearing a bullet-proof vest,
22 possessed an AR-15 and that there was a stabbing victim in the area. After arriving
23 at the incident location, the Defendant Deputies observed the Decedent in possession
24 of an AR-15 and bullet-proof vest. They further observed the Decedent ignore
25 numerous commands to drop his weapon and approach dangerously close to Mr.
26 Wiseman's Tesla. Knowing that the Decedent had already used deadly force against
27 a victim (the Plaintiff), the Defendant Deputies had a duty to respond with deadly
28 force once the Decedent came within a few feet of Mr. Wiseman's vehicle. Although

1 the Decedent never raised, pointed or fired his rifle at the Defendant Deputies, his
2 right arm was bent at an angle that suggested his right hand was on the pistol grip of
3 the rifle, and that he could quickly raise and shoot the rifle one-handed.

4 Based on the foregoing, it was objectively reasonable for the Defendant
5 Deputies to respond with lethal force. At a minimum, there is no factual basis for
6 concluding that every objectively reasonable officer would have understood that using
7 lethal force violated the clearly established rights of the Decedent. Accordingly, the
8 Defendant Deputies are entitled to qualified immunity.

9 **VI. BIFURCATION OF ISSUES**

10 Defendants do not request that the Court bifurcate any additional issues.

11 **VII. JURY TRIAL**

12 All issues applicable to Defendants are triable to a jury, and a Demand for Jury
13 Trial was timely filed by Defendants, as well as by Plaintiff. Defendants hereby
14 reiterate their demand for a jury trial in this matter.

15 **VIII. ABANDONMENT OF ISSUES**

16 The Court granted Defendants' Motion for Summary Judgment, or Partial
17 Summary Judgment, for the following causes of action:

18 (2) Unreasonable Search and Seizure – Denial of Medical Care (42 U.S.C. §
19 1983)

20 (3) Municipal Liability – Ratification (42 U.S.C. § 1983)

21 (4) Municipal Liability – Inadequate Training (42 U.S.C. § 1983)

22 (5) Municipal Liability – Unconstitutional Custom or Policy (42 U.S.C. §
23 1983).

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